



# Texas Public Policy Foundation

November 16, 2021

## Submitted via FOIA Online

National Freedom of Information Office  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW (2310A)  
Washington, DC 20460  
[hq.foia@epa.gov](mailto:hq.foia@epa.gov)

### **RE: Request for Certain Agency Records – EPA’s Response to a 2009 Rulemaking Petition**

Dear Freedom of Information Act Officer:

Life:Powered, a national initiative of the Texas Public Policy Foundation, submits this request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* Life:Powered seeks to inform the national discussion about energy and the environment and advocate for policies that promote economic freedom and advance the human condition.

On January 19, 2021, EPA denied a rulemaking petition, dated December 2, 2009, from the Center for Biological Diversity and 350.org asking EPA to establish national pollution limits for greenhouse gases pursuant to the Clean Air Act (“the 2009 Petition”). Acting Administrator Jane Nishida later sent a letter to Kassie Siegal of the Center for Biological Diversity, dated March 4, 2021, withdrawing the denial. The March 4, 2021 letter asserts that “the agency did not fully and fairly assess the issues raised by the petition.”

1. Please provide all records reviewed by then Acting Administrator Nishida and her staff in determining that the agency did not “fully and fairly assess the issues raised by the petition.”
2. Please provide all records that support then Acting Administrator Nishida’s determination that the agency did not “fully and fairly assess the issues raised by the petition.”
3. Please provide all communications between then Acting Administrator Nishida and/or her staff and Avi Garbow regarding the 2009 petition.
4. Please provide all communications between then Acting Administrator Nishida and/or her staff and Maggie Thomas regarding the 2009 petition.

5. Please provide all communications between then Acting Administrator Nishida and/or her staff and Janet McCabe regarding the 2009 petition.
6. Please identify any meetings between former Acting Administrator Nishida and/or her staff and any person or entity not employed by an agency of the United States at the time of the communication regarding the 2009 petition.
7. Please provide meeting notes and any papers, presentations, or informational materials generated for or during any meeting between then Acting Administrator Nishida and any person or entity not employed by an agency of the United States at the time of the communication regarding the 2009 petition.
8. Please provide all communications between former Acting Administrator Nishida and/or her staff and any person or entity not employed by an agency of the United States at the time of the communication regarding the 2009 petition.

For the purposes of this request, “**records**” means documents, information, memoranda, letters, reports, drafts, communications, records of communications, telephone message records, calendars, agendas, meeting sign-in sheets, presentations, handwritten or typed notes, facsimile transmissions, electronic mail, transcripts or recordings (audio or visual) of meetings, tapes, and all other types of records in the possession, control or custody of the Agency or contractors working for the Agency. “**EPA employees**” means both career staff and political appointees. Additionally, “**communications**” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

For all records responsive to these requests that are not produced based on an asserted exemption from disclosure, please prepare a privilege and/or exemption log describing at a minimum: (i) the type of record withheld, (ii) the date(s) of the creation of the record; (iii) the subject of the record, (iv) the identity of the author and all recipients of the records; and (v) a detailed description of the basis upon which the Agency is withholding the record (*e.g.*, the claim of privilege, FOIA exemption, etc.). To the extent any responsive documents are withheld based upon a claim of privilege or other exemption from disclosure, please produce redacted copies of all non-privileged or non-exempt factual material contained within such documents. 5 U.S.C. § 552(b).

Pursuant to FOIA and EPA regulations, the Agency has 20 days to fulfill this request. 5 U.S.C. § 552(a)(6)(A); 40 C.F.R. § 2.104. If it is not possible to provide all the records within 20 days, please provide the responsive records that are available as of the deadline.

As a non-profit, public interest research institute, TPPF requests a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii). TPPF is a non-profit, non-partisan research institute dedicated to promoting and defending liberty, personal responsibility, and free enterprise throughout Texas and the nation. For decades, TPPF has worked to advance these goals through research, policy advocacy, and impact litigation.

Since its inception in 1989, the Foundation has emphasized the importance of limited government, free market competition, private property rights, and freedom from regulation. In accordance with its central mission, the Foundation has hosted policy discussions, authored research, presented legislative testimony, and drafted model ordinances to reduce the burden of government on Texans. Historically, the Foundation has worked through its Life:Powered project to advocate for energy policies that promote economic freedom and advance the human condition.

The requested information is “likely to contribute significantly to public understanding of the operations or activities of the government.” 40 C.F.R. § 2.107(l)(1). The requested information is not “primarily in [TPPF’s] commercial interest,” because as a non-profit, public interest research institute we are not engaged in a commercial pursuit. *Id.* This request concerns EPA’s response to a rulemaking petition and thus directly “concerns ‘the operation or activities of the government.’” *Id.* at § 2.107(l)(2)(i). The requested information is “‘likely to contribute’ to an increased public understanding of those operations or activities,” as EPA’s response to such petitions impacts the agency’s functions. *Id.* at § 2.107(l)(2)(ii). Part of the Life:Powered initiative’s core mission is to inform the national discussion about energy and the environment, so the disclosure will surely contribute to “the understanding of a . . . broad audience of persons interested in the subject.” *Id.* at § 2.107(l)(2)(iii). Finally, this is an area where the disclosure is “likely to contribute ‘significantly’ to public understanding.” *Id.* at § 2.107(l)(2)(iv). Should this request for a fee waiver be denied, we authorize \$250 to be expended for the reasonable costs associated with searching for and copying these records. However, should these costs exceed \$250 please contact me prior to proceeding.

It is worth noting that TPPF is submitting separate FOIA requests seeking records on different subject matters and focused on different offices within EPA. We submit these requests separately because of their unique focus, and not for the purpose of avoiding fees. *See id.* at § 2.107(i).

We look forward to your response to this matter. Should you have any questions, please contact me at [jisaac@texaspolicy.com](mailto:jisaac@texaspolicy.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Isaac', with a stylized flourish at the end.

Hon. Jason Isaac  
Director, Life:Powered  
Texas Public Policy Foundation